

March 12th, 2010

Testimony by Matthew Waggner, Registrar of Voters from Fairfield, CT

Raised Bill #5441 - AN ACT CONCERNING CERTAIN REVISIONS TO ELECTIONS RELATED STATUTES

I'm pleased to see the introduction of this important package of "technical fixes" to bring our statutes up to date with current technology. However, I would like to speak to an ambiguity relating to our voting machines that is not addressed by the raised bill, and ask you to consider addressing it in this or a future bill.

The current statutes concerning recanvasses -- also known as "recounts" -- directs election officials to perform certain tasks specific to lever machines, and such references have been removed in the present bill. However, votes cast using paper ballots introduce new challenges, as voters may make incorrect or stray marks that are not or cannot be interpreted correctly by the optical scanner in each tabulator machine. Several examples of marks which we have found on ballots that would be incorrectly counted are attached to this written testimony.

The importance of determining each voter's intent in producing the final tally of results is reflected in several locations:

- 1) The statute which authorized the Secretary of State to approve a new voting system (CGS Section 9-242) instructs the Secretary to obtain a system "which meets the voluntary performance and test standards for voting systems adopted by ... the Election Assistance Commission [EAC] pursuant to the Help America Vote Act of 2002[.]" These voluntary performance guidelines indicate that determining the voter intent is necessary to "[address] the threats that the voting device might record and report results electronically that disagree with the choices indicated by the voter." The guidelines also state that "The human-readable content of the [ballot] must contain all information needed to interpret the cast vote. This is necessary to ensure that hand audits and recounts can be done using only the human-readable parts of the paper records."
- 2) CGS Section 9-150a, which sets the standard for counting absentee ballots (and pre-dates the use of optical scanners in polling places), states that
 - "(j) In the counting of absentee ballots **the intent of the voter shall govern**, provided the following conclusive presumptions, where applicable, shall prevail in determining such intent:
 - (1) If the names of more candidates for an office than the voter is entitled to vote for are checked or validly written in, then the vote cast for that office shall be deemed an invalid overvote.
 - (2) If the name of a candidate who has vacated his candidacy is checked such vote shall not be counted.
 - (3) On an absentee ballot on which candidates' names are printed, a vote shall be deemed cast only for each candidate whose name is individually checked or validly written in, except as otherwise provided in this subsection. If a party designation is circled, checked, underscored or similarly marked in any manner, or written in, no vote shall be deemed cast or cancelled for any candidate by virtue of such marking or writing.
 - (k) **If the intent of an absentee voter is difficult to ascertain due to uncertain, conflicting or incorrect ballot markings which are not clearly addressed in this section or in the procedure manual for counting absentee ballots provided by the Secretary of the State, the absentee ballot counters shall submit the ballot and their question to the moderator. They shall then count the ballot in accordance with the moderator's decision as to the voter's intent, if such intent is ascertainable. A ballot or part of a ballot on which the intent is determined by the moderator to be not ascertainable, shall not be counted. The moderator shall endorse on the ballot the question and his decision.**
- 3) Current audit law, provided for in 9-320f(e), requires Registrars to examine ballots to determine whether they have been "properly completed", stating that "[f]or the purposes of this section, a ballot that has not been properly completed will be deemed to be a ballot on which (1) votes have been marked by the voter outside the

vote targets, (2) votes have been marked by the voter using a manual marking device that cannot be read by the voting machine, or (3) in the judgment of the registrars of voters, the voter marked the ballot in such a manner that the voting machine may not have read the marks as votes cast.”

However, the recanvass of regular (non-absentee) ballots does not include any such consideration of voter intent in present law or in the raised bill before this committee.

I would like to urge the committee to consider adopting language which provides clear guidelines for when a vote cast for an office should be counted, and more importantly, exposes the final decision concerning each ballot to the public (including candidates) that attend the recanvass events.

The recanvass is an opportunity to reconcile the unexpected markings and determine the will of the electorate in an open, fair, and most importantly accurate fashion. Adopting a standard similar to that of Sec. 9-150a or of 9-320f(e) for the recanvassing of all ballots would serve to ensure that the final returns are as accurate as possible, and reinforce public confidence in the outcome of even the closest of elections.

Raised Bill #423 - AN ACT CONCERNING RECOMMENDATIONS OF THE CONNECTICUT TOWN CLERKS CONCERNING DISCLOSURE AND ELECTIONS LAWS

In reading the agenda for today’s hearing, I noticed this amended disclosure proposal, and while I appreciate the necessity for Town Clerks and the DMV to be exempted from the FOIA requirements concerning the disclosure of addresses for public safety, judicial, and other persons, in truth the disclosure exemption is unrealistic for all FOI-able government agencies, as no such list of exempted individuals is made available to agencies at present.

With absolute certainty, I can tell you that our office has been disclosing the home addresses of police officers, judges, and judicial branch employees through our voter lists for some time, and now that we are aware of the exemption, I am at a loss as to how we would identify these individuals to comply with this aspect of the FOIA.

I believe that one of three approaches must be used to make this exemption workable:

- 1) The FOIA could designate a specific state agency as having responsibility for compiling a list of exempt individuals, and making it available to public agencies throughout the state;
- 2) The state’s Address Confidentiality Program, as administered through the Secretary of the State, could be expanded to allow these individuals to apply – participants are given a false address to use on public records, providing a balance of public disclosure and, where warranted, individual safety; or
- 3) The section outlining these exemptions should be discarded (since in practice, it is impractical to follow) or the exemption granted to Town Clerks and the DMV in the raised bill should be extended to other public agencies as well.

Thank you for your time, and your attention to these concerns.

Sincerely yours

Matthew R. Waggner
Fairfield Registrar of Voters

Fig. 1 ~ Partially-filled bubbles
Will read 9A, 9B, 10A unreliably; will likely not read 11A

Fig. 2 ~ Voter-written instructions
Will read 9A, 9B, 10A as votes, won't detect instructions

Fig. 3 ~ Circled / non-standard marks
Will read 9B unreliably, will likely not read 9A, 10A

Fig. 4 – Bleeds / smudges
May read 9A as a valid vote despite no voter intent

Fig. 5 - Machine variation